Case 1:03-cv-05071-GBD-SN Document 19 Filed **United States District Court** DATE FILED: 6-11 Southern District of New York 03 MDL 1570 (RCC) ECF Case In re Terrorist Attacks on September 11, 2001 Case Management Order #2 This document relates to: All actions Richard Conway Casey, United States District Court Judge: If this Court so directs, Plaintiffs consent to proceed before a United States Magistrate for pre-trial purposes, pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. Yes X No Counsel for the parties have discussed the merits of settlement in regard to this action and wish to request a settlement conference before a United States Magistrate. No X Counsel for the parties have discussed the merits of mediation in regard to this action and wish to employ the mediation services provided by this Court. No X Yes ____ Consolidation 1. The actions listed in Schedule A have been transferred to this Court pursuant to 28 U.S.C. § 1407 for coordinated or consolidated pretrial purposes by the Judicial Panel on Multidistrict Litigation. All such actions are hereby consolidated for pretrial purposes pursuant to the provisions of Rule 42 of the Federal Rules of Civil Procedure under the docket number MDL 1570 (the "Consolidated Action").

references to consolidation in this Order shall refer to consolidation for pretrial purposes

pursuant to 28 U.S.C. § 1407. This Order does not constitute a determination that the

Individual Actions should be consolidated for trial, nor does it have the effect of making any entity a party to an action in which it has not been joined and served in accordance with the Federal Rules of Civil Procedure.

- 2. Additional actions transferred and consolidated with MDL 1570 as "tagalong actions" pursuant to Rules 7.4 and 7.5 of the Rules of Procedure of the Judicial Panel on Multi-District Litigation or designated as "related actions" under the Local Rules of the Southern District of New York (together, "Related Cases") shall be subject to the provisions of this Order.
- 3. A Master File, and a Master Docket for that file, are hereby established for these consolidated proceedings. The original of this Order shall be filed by the Clerk in the Master File. The Clerk of the Court shall file all orders, pleadings, motions, and other documents bearing the Docket Number MDL 1570 in the Master File and shall note such filing in the Master Docket. No further copies need be filed or docket entries made, except as provided in Paragraph 5.
- 4. The Clerk has assigned, or shall assign, a separate docket number (an "S.D.N.Y. Docket Number") and shall maintain a separate file for each of the actions on Schedule A and each Related Case (the "Individual Actions"). A copy of this Order shall be placed in each such separate file. No further filings need be made in the separate files, except as provided in Paragraph 5. All orders, pleadings, motions, and other documents filed in the Master File will be deemed filed and entered in each individual action to the extent applicable. The Clerk shall ensure that this Order is docketed electronically and distributed through the Electronic Case Filing system.

5. Documents intended to apply only to a particular Individual Action or Actions will, as described in Paragraph 6 below, indicate in their caption the S.D.N.Y. Docket Number(s) of the Individual Action(s) to which they apply. Such documents will be filed and docketed both in the Master File and the separate file(s) for the specified Individual Action(s), in accordance with the Electronic Case Filing system procedures established by the Clerk's Office.

Captions

6. Every paper filed in the Consolidated Action shall have the following caption:

United States District Court Southern District of New York

In re Terrorist Attacks on September 11, 2001	03 MDL 1570 (RCC) ECF Case
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This document relates to: All actions

- 7. When a paper is intended to be applicable to all of the Individual Actions, the words "All Actions" shall appear after the words "This Document Relates To:" in the caption set forth above and only the Master Docket number will be identified.
- 8. When a paper is intended to be applicable to some, but not all, of the Individual Actions, the S.D.N.Y. Docket Number for each Individual Action to which the paper applies and the full names of the first plaintiff and first defendant in that action shall appear immediately after the words "This Document Relates To:" in the caption set forth above.

Filings and Service of Papers

- 9. Pursuant to paragraph 1 of this Court's Case Management Order No. 1, all attorneys who have made appearances in this case must register with the Court's CM/ECF system. Counsel may not opt out of email service for non-court documents. All written communication with the Court of any type or kind whatsoever shall be served on all counsel of record in all the Individual Actions, regardless of which or how many Individual Actions such communication relates to. Service shall be accomplished as follows:
- (a) For all documents filed through the ECF system, service shall be deemed complete upon electronic filing through the ECF system and no further service need be made. If at least one member of a law firm representing a party has registered for electronic service through the ECF system, a party filing a document in the ECF system need not serve by mail or other means other attorneys in the same firm, even if the other attorneys' names appear as not having been served electronically through the ECF system.
- (b) For documents that are not filed through the ECF system but that nonetheless are required to be served, service shall be by e-mail and shall be necessary only upon those attorneys listed with e-mail contact information in Schedule B. Attorneys who subsequently consent to be served by e-mail shall so notify the Court in writing and provide e-mail contact information to Kreindler & Kreindler.
- 10. Where voluminous documents that are required to be filed through the ECF format do not exist in electronic format and it would be burdensome to convert them, hard copies may be served by hand, by express courier service, or by mail. Service

of hard copies shall be deemed complete upon hand-delivery or upon delivery to the United States Postal Service or an express courier service.

Service Cut-Off Date: Service of the summons and complaint on a 11. defendant not located in a foreign country shall be made in accordance with Federal Rule of Civil Procedure 4(m). Service of the summons and complaint upon a defendant located in a foreign country who has been named as of the date of this order shall be made by October 15, 2004, or, if a motion to effect service through alternative means has been filed with respect to that defendant, service shall be made within 90 days of a decision by this Court on the motion. Any defendant located in a foreign country who is named after the date of this order shall be served within 120 days after being so named, or, if a motion for alternative service is filed in connection with that defendant, within 90 days of a decision on such a motion. A motion for alternative service shall be filed within 60 days of the date on which the defendant has been named. The Court, upon motion or on its own initiative after notice to the plaintiffs, may dismiss the action without prejudice as to any defendant who has not been served or, provided that the plaintiffs show good cause for the failure to serve, the Court may extend the time for service for an appropriate period.

Pleadings and Parties

Addition of Parties: Joinder of additional parties must be accomplished by 12. December 31, 2004. Plaintiffs may without further leave of court add or remove parties by listing their names and filing the lists as supplemental pleadings under F.R.C.P. 15(d). The caption in the docket for the Individual Action to which a plaintiff or defendant has been added or removed will be changed to reflect the names of the parties in the Individual Actions as amended by the filing. Plaintiffs added by this procedure need not re-serve defendants who have already been served. Any defendant added by this procedure may, in lieu of any other answer or response to the complaint, and within the same time period allowed for such other answer or response, request, by motion or otherwise, a more definite statement pursuant to F.R.C.P. 12(e). Such request for a more definite statement shall not operate as a waiver of any defenses or objections, including objections based on lack of jurisdiction or improper service. When a defendant as to whom no allegations have been asserted requests a more definite statement pursuant to the procedures set forth herein, plaintiffs shall file the requested statement within 30 days. Rule 12(e) statements filed pursuant to this procedure may be filed as an independent pleading and no Amended Complaint need be filed. The filing of such a more definite statement will be deemed an amendment to plaintiffs' Complaint or Amended Complaint, by incorporation by reference. When a defendant requests a more definite statement pursuant to this procedure, the time for such defendant to answer, move, or otherwise respond to the Complaint shall run from service of the statement so requested.

- 13. Amendments: Amended pleadings may be filed until July 31, 2005, after which any amendments must be approved by the Court, pursuant to Federal Rule of Civile Procedure 15(a). Plaintiffs may file more definite statements and/or additional allegations against existing defendants by filing statements to this effect, which will be treated and accepted as pleadings and deemed amendments to previously-filed Complaints or Amended Complaints, in lieu of filing an additional Amended Complaint. On July 31, 2005, the plaintiffs shall file an amended complaint that includes all amendments made prior to that date, whether made pursuant to Rule 12(e) or otherwise.
- 14. RICO Statements: As to all defendants on behalf of whom counsel have entered an appearance in the Federal Insurance action as of the date of this Order, the Federal Insurance plaintiffs shall file a RICO Statement, in the form set forth in this Court's "Instructions for filing RICO Statement," available on the Internet at:

www.nysd.uscourts.gov/judges/usdj/casey.htm

within thirty (30) days of the date of this Order. As to all other defendants named in the Federal Insurance action, the Federal Insurance plaintiffs shall file a RICO Statement within thirty (30) days of the filing of an entry of appearance by counsel on behalf of any such defendant in the Federal Insurance action. Any such RICO Statement shall be deemed an amendment to the Federal Insurance plaintiffs' Complaint or Amended Complaint, by incorporation by reference.

Discovery

- 15. All discovery responses already served by defendants in the *Burnett* action shall be deemed part of the Consolidated Action. Discovery requests already served in the *Burnett* action to which responses have not yet been served need not be re-served, except that copies of all such requests shall be provided to the Plaintiffs' Executive Committee(s) and to counsel for any party to whom such requests pertain if such counsel has not already been served.
- 16. Any party may seek the assistance of the Court in obtaining documents from non-party foreign governments or officials through a "letters rogatory" process or otherwise. Any party seeking such assistance shall notify all other parties and all parties together shall submit an agreed form of requests to be sent to the foreign government or official. To the extent that any party sends a representative to personally retrieve documents provided in response to a request from this Court to a foreign government or official, plaintiffs (collectively) and defendants (collectively) shall be entitled to send the same number of representatives. All documents so retrieved shall be deposited with the Court and shall be made available to all parties. The parties shall make such application to this Court as may be necessary to effectuate this provision.
- 17. Fact Discovery: Written discovery and depositions addressed to non-parties and to or from any defendant that has filed an Answer in any of the Individual Actions as to liability issues only may commence immediately. As to any defendant that has filed a motion to dismiss on grounds of immunity from suit (based on the Foreign Sovereign Immunities Act or diplomatic immunity) or for lack of personal jurisdiction, merits discovery shall not take place until such jurisdictional motion has been resolved by this Court, except upon application to the Court based on extenuating circumstances.

Depositions may proceed concurrently with written discovery. No depositions shall be extended beyond two business days without prior leave of the Court. A party may take a deposition by videotape by so indicating in its Notice of Deposition or by providing written notice that the deposition will be videotaped no less than 10 days before the deposition. Objections to the videotaping of a deposition must be filed and served within 5 days after notice of videotaping is served. Unless the Court has ruled to the contrary prior to the deposition, the deposition may be videotaped. Fact discovery shall be completed by December 31, 2005.

- 18. Expert discovery: Experts are to be designated and their expert reports exchanged by February 15, 2006. Expert depositions shall commence after February 15, 2006 and shall be completed by April 15, 2006.
 - 19. All liability discovery is to be completed by April 15, 2006.
- 20. To the extent possible, the parties shall conduct consolidated discovery and all discovery notices served and all responses to all discovery requests in an Individual Action shall be deemed to be part of the Consolidated Action and each Individual Action.
- 21. Interim deadlines may be extended by the parties on consent without application to the Court, provided the parties are certain they can still meet the discovery completion date ordered by the Court, which shall not be adjourned except upon approval by the Court.
- 22. Document Translation: A party producing documents in a language other than English shall produce existing translations of those documents; however, translations produced by or for a party's attorney need not be produced.

Dispositive Motions

- 23. All motions and applications shall be governed by the Court's Individual Rules of Practice.
- 24. A pre-motion conference will be required before any dispositive motion is filed, except motions to dismiss. The Court will confirm the parties' briefing schedule at the pre-motion conference. After the papers are fully submitted, the parties will be informed whether oral arguments are required. With respect to motions to dismiss, the Defendants (or the parties, to the extent they agree) will submit a proposed briefing and oral argument schedule to the Court in advance of the next Case Management Conference.
- 25. With respect to motions to dismiss, the parties shall submit to the Court an agreed-upon, proposed briefing schedule.
- 26. With respect to motions to dismiss in the Federal Insurance matter, defendants who have been served on or before March 10, 2004 shall file their motions to dismiss in accordance with any stipulations approved by the Court or such other schedule as the Court may order; opposing papers shall be filed within 60 days of the filing of any such papers and reply papers shall be filed within 14 days after receipt of opposing papers.
- No summary judgment motion will be heard before the close of discovery.Admission of Attorneys and Admissions

28. In accordance with Rule 1.4 of the Rules Procedure of the Judicial Panel on Multidistrict Litigation, any attorney of record in any of the Individual Actions may continue to represent his or her client in this Court in this action. Such attorneys shall be deemed admitted *pro hac vice* for purposes of the Consolidated Action and need not obtain local counsel.

Case Management Conferences

29. The next Case Management Conference shall take place on September 13, 2004. Plaintiffs' Liaison Counsel and defendants' counsel shall confer at least five (5) business days in advance of each scheduled Case Management Conference for the purpose of attempting to narrow and agree upon issues to be discussed at the conference and for the further purpose of preparing and submitting to the Court an agreed-upon Case Management Conference agenda, including a schedule of motions that are ready to be heard. Such agenda shall be submitted to the Court at least three (3) business days in advance of the Case Management conference and, to the extent reasonable, the parties shall be limited to discussion of the matters on the agenda. To the extent that the parties are unable to agree upon a joint agenda, separate proposed agendas may be submitted.

So Ordered.

Richard Conway Casey, U.S.D.J.

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June 7, 2004 New York, New York

Schedule A – Individual Acti	ons Consolidated in	MDL 1570
THOMAS BURNETT, SR.,		
	Plaintiffs,	Civ. Action No. 03 CV 9849 (RCC)
- against -		
AL BARAKA INVESTMEN DEVELOPMENT CORP., et		
	Defendants.	
KATHLEEN ASHTON, et al		Civ. Action No. 02 CV 6977 (RCC)
	Plaintiffs,	
- against —		
AL QAEDA ISLAMIC ARM	IY, et al.,	
	Defendants.	
FIONA HAVLISH, et al.,	x	
	Plaintiffs,	
- against –		Civ. Action No. 03 CV 9848 (RCC)
SHEIKH USAMA BIN-LAD	EN, et al.,	

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ESTATE OF JOHN P. O'NEILL, SI			
Plainti			
- against —	1	Civ. Action No. 02	3 CV 1923
AL BARAKA INVESTMENT & DEVELOPMENT CORP., et al.			
Defen			
ESTATE OF JOHN P. O'NEILL, SI			
Plainti		Civ. Action No. 0:	2 CW 1022
- against —	·	Civ. Action No. 0.	3 CV 1922
KINGDOM OF SAUDI ARABIA et	t al		
Defen			
FEDERAL INSURANCE CO., et al	••		
Plainti		Civ Action No. 0	3 CV 6978 (RCC)
_ against -		O. 1 101011 110. 0.	5 CV 05/10 (NCC)
AL QAIDA			
Defen	dants.		
	14		

THOMAS BURNETT, Sr.et		
	Plaintiffs,	C'- A' N 02 CV 5720
- against		Civ. Action No. 03 CV 5738
AL BARAKA INVESTMEN DEVELOPMENT CORP., e		
	Defendants.	
BARRERA et al.	X	
	Plaintiffs,	C' A i N 02 CV T02
- against -		Civ. Action No. 03 CV 7036
AL QAEDA ISLAMIC ARM	MY et al.	
	Defendants.	
	x	

Schedule B: Attorneys to be served electronically

Plaintiffs' Counsel (June 15, 2004)

03 MDL 1570 SERVICE LIST

In re: Terrorist Attack on September 11, 2001, 03 MD 1570 (Judge Richard Casey), U.S. District Court for the Southern District of New York

Plaintiffs' Counsel	Underlying Case Name
ALLAN GERSON, ESQUIRE	Burnett, et al. v. Al Baraka Investment and
4221 Lenore Lane, N.W.	Development Corp., et al.
Washington, DC 20008	
Tel: (202) 966-8557	
Fax: (202) 966-8557	
gerson@gilgintl.org	
BARASCH McGARRY SALZMAN PENSON &	Ashton, et al. v. Al Qaeda, et al.
LIM	
11 Park Place	
New York, NY 10007	
Tel: (212) 385-8000	
Fax: (212) 385-7845	
1 un. (212) 303 7013	
Michael Barasch, Esquire	
michael@personalinjuryjustice.com	
BARTIMUS, FRICKLETON, ROBERTSON &	Burnett, et al. v. Al Baraka Investment and
OBETZ	Development Corp., et al.
200 Madison Avenue, Suite 1000	Development Corp., et al.
Jefferson City, MO 65101	
Tel: (573) 659-4454	
Fax: (573) 659-4460	
Fax. (373) 039-4400	
Edward D. Robertson, Esquire	
chiprob@earthlink.net	
emproo@eartmink.net	
Mary Winter, Esquire	
marywinter@earthlink.net	
BAUMEISTER & SAMUELS, PC	A-l-t
	Ashton, et al. v. Al Qaeda, et al.
One Exchange Place, 15 th Floor	
New York, NY 10006-3008	
Tel: (212) 363-1200	
Fax: (212) 363-1346	
Michal E Danneistan Hamina	
Michel F. Baumeister, Esquire	
mbaumeister@baumeisterlaw.com	
Then M. Canona Econina	
Thea M. Capone, Esquire	
tcapone@baumeisterlaw.com	
Daugles A. Lette Esquire	
Douglas A. Latto, Esquire dlatto@baumeisterlaw.com	
diano(@baumeisteriaw.com	

BRODER & REITER 350 Fifth Avenue, Suite 2811 New York, NY 10118 Tel: (212) 244-2000 Fax: (212) 268-5297 Aaron J. Broder, Esquire Jonathan C. Reiter, Esquire	Ashton, et al. v. Al Qaeda, et al.
info@broderreiter.com	
BROWN, TERRELL, HOGAN,	Havlish, et al. v. Bin Laden, et al.
ELLIS, McCLAMMA, YEGELWEL PA	
8th Floor - Blackstone Building	
233 East Bay St.	
Jacksonville, FL 32202	
Cum I Vanalural Ecquire	
Evan J. Yegelwel, Esquire ejy@bthemy.com	
ejyttööttiettiy.com	
D'Vorah Ben-Moshe	
dbm@bthemy.com	
BURBIDGE and MITCHELL	Havlish, et al. v. Bin Laden, et al.
139 East South Temple, Suite 2001	
Salt Lake City, UT 84111	
Tel: (801) 355-6677	
Fax: (801) 355-2341	
D. Richard Burbidge, Esquire	
rburbidge@burbidgeandmitchell.com	
CORDRAY LAW FIRM	Burnett, et al. v. Al Baraka Investment and
40 Calhoun Street, Suite 420	Development Corp., et al.
Post Office Drawer 22857	
Charleston, SC 29413-2857	
Tel: (843) 577-9761	
Fax: (843) 853-6330	
Jack D. Cordray, Esquire	
jack@cordraylawfirm.com	

COZEN O'CONNOR 1900 Market Street Philadelphia, PA 19103 Tel: (215) 665-2000 Fax: (215) 665-2013 Stephen A. Cozen, Esquire Elliott R. Feldman, Esquire Sean P. Carter, Esquire Mark T. Mullen, Esquire Lisa Haas, Esquire J. Scott Tarbutton, Esquire. MDL1570@cozen.com	Federal Insurance Co., et al. v. Al Qaida, et al.
DAVIS, SAPERSTEIN & SALOMON, P.C. 375 Cedar Lane Teaneck, NJ 07666 Tel: (201) 907-5000 Fax: (201) 692-0444 Samuel L. Davis, Esquire sam@dsslaw.com	Burnett, et al. v. Al Baraka Investment and Development Corp., et al.
EPSTEIN BECKER & GREEN, P.C. 250 Park Avenue New York, NY 10177-1211 Tel: (212) 351-4500 Fax: (212) 661-0989 Clare M. Sproule, Esquire csproule@ebglaw.com	Burnett, et al. v. Al Baraka Investment and Development Corp., et al.
GAIR, GAIR, CONASON, STEIGMAN & MACKAUF 80 Pine Street New York, NY 10005 Tel: (212) 943-1090 Fax: (212) 425-7513 Robert Conason, Esquire rconason@gairgair.com Howard Hershenhorn, Esquire hsh@gairgair.com	Burnett, et al. v. Al Baraka Investment and Development Corp., et al.
GALIHER, DeROBERTIS, NAKAMURA, ONO & TAKITANI 610 Ward Avenue, Suite 200 Honolulu, HI 96814 Tel: (808) 597-1400 Fax: (808) 591-2608 Gary O. Galiher, Esquire gog@gogaliher.com	Burnett, et al. v. Al Baraka Investment and Development Corp., et al.

HANLY CONROY BIERSTEIN & SHERIDAN LLP 415 Madison Avenue New York, NY 10017 Tel: (212) 401-7600 Fax: (212) 401-7618 Andrea Bierstein, Esquire abierstein@hanlyconroy.com Mary Palmer, Paralegal mpalmer@hanlyconroy.com	Burnett, et al. v. Al Baraka Investment and Development Corp., et al.
HOWARTH & SMITH 800 Wilshire Boulevard, Suite 750 Los Angeles, CA 90017	Burnett, et al. v. Al Baraka Investment and Development Corp., et al.
Tel: (213) 955-9400 Fax: (213) 622-0791 Robert D. Brain, Esquire Don Howarth, Esquire Suzelle M. Smith, Esquire MDL1570@howarth-smith.com	Havlish, et al. v. Bin Laden, et al.
THE HUGE LAW FIRM PLLC 7 th Floor 1001 Pennsylvania Avenue, NW Washington, DC 20004 Tel: (843) 722-1628 Fax: (202) 318-1261 Harry Huge, Esquire harryhuge@comcast.net	Burnett, et al. v. Al Baraka Investment and Development Corp., et al.
J. DAVID O'BRIEN, ESQUIRE 20 Vesey Street, Suite 700 New York, NY 10007 Tel: (212) 571-6111 Fax: (212) 571-6166 obrienlawusa@aol.com	Tremsky, et al. v. Osama Bin Laden, et al.
JAROSLAWICZ & JAROS, ESQUIRES 150 William Street New York, NY 10038 Tel: (212) 227-2780 Fax: (212) 227-5090 David Jaroslawicz, Esquire davidjaroslawicz@yahoo.com	Ashton, et al. v. Al Qaeda, et al.

JUDICIAL WATCH, INC. 501 School Street, SW, Suite 725 Washington, DC 20024 Tel: (202) 646-5175 Fax: (202) 646-5199 Paul J. Orfanedes, Esquire James F. Peterson, Esquire	Burnett v. Al Baraka Inv. and Dev. Corp., et al.
jpeterson@judicialwatch.org	
KREINDLER & KREINDLER 100 Park Avenuc New York, NY 10017 Tel: (212) 687-8181 Fax: (212) 972-9432	Ashton, et al. v. Al Qaeda, et al.
Justin T. Green, Esquire jgreen@kreindler.com	
James P. Kreindler, Esquire jkreindler@kreindler.com	
Andrew J. Maloney, III, Esquire amaloney@kreindler.com	
Marc S. Moller, Esquire mmoller@kreindler.com	
Vince Parrett, Esquire vparrett@kreindler.com	
Steven Habig shabig@kreindler.com	
LAMM, RUBENSTONE, TOTARO & DAVID, LLC 4 Greenwood Square, Suite 200	Havlish, et al. v. Bin Laden, et al.
P.O. Box 8544 Bensalem, PA 19020-8544	
Tel: (215) 638-9330	
Fax: (215) 638-2867	
Edward H. Rubenstone, Esquire erubenstone@lrtd.com	

LAW OFFICES OF JERRY S. GOLDMAN AND ASSOCIATES, P.C. 111 Broadway, 13th Floor New York, NY 10006 Tel: (212) 385-1005 Fax: (212) 346-4665 Jerry S. Goldman, Esquire jgoldman@goldmanlawyers.com	Estate of John P. O'Neill, Sr., et al v. Kingdom of Saudi Arabia, et al.
Gina Mac Neill, Esquire	
GMacNeill@goldmanlawyers.com LAW OFFICES OF JOSHUA M. AMBUSH, LLC 600 Reistertown Road Suite 200 A Baltimore, MD 21208 Tel: (410) 484-2070 Fax: (410) 484-9330	Estate of John P. O'Neill, Sr., et al v. Kingdom of Saudi Arabia, et al.
Joshua M. Ambush, Esquire joshua@ambushlaw.com	
Helen Louise Hunter, Esquire hlsh@aol.com	
LEE LEE & LEE	Burnett, et al. v. Al Baraka Investment and
422 S. Gay Street	Development Corp., et al.
Knoxville, TN 37902 Tel: (865) 544-0101	Havlish, et al. v. Bin Ładen, et al.
Fax: (865) 544-0536	Mavish, et al. v. Dir Laden, et al.
J.D. Lee, Esquire jdlee@jdlee.com	
David Lee, Esquire	
davidl@lancairsouth.com	
MELLON WEBSTER & SHELLY	Havlish, et al. v. Bin Laden, et al
87 North Broad Street Doylestown, PA 18901	Burnett, et al. v. Al Baraka Investment and
Tel: (215) 348-7700	Development Corp., et al.
Fax: (215) 348-0171	F,
Thomas E. Mellon, Jr., Esquire tmellon@mellonwebster.com	
Stephen Corr, Esquire scorr@mellonwebster.com	
Jack Corr, Esquire jcorr@mellonwebster.com	

MOTLEY RICE LLC 28 Bridgeside Boulevard P.O. Box 1792 Mount Pleasant, SC 29465 Tel: (843) 216-9000 Fax: (843) 216-9450 Ronald L. Motley, Esquire Jodi Westbrook Flowers, Esquire Donald A. Migliori, Esquire Jeffrey S. Thompson, Esquire William Narwold, Esquire Michael E. Elsner, Esquire Ingrid Moll, Esquire Justin Kaplan, Esquire MDL1570@motleyrice.com	Burnett, et al. v. Al Baraka Investment and Development Corp., et al. Havlish, et al. v. Bin Laden, et al.
PROF. PAUL R. DUBINSKY New York Law School 7 Worth Street New York, NY 10013 Tel: (212) 431-2157 Fax: (212) 431-1830 Paul R. Dubinsky pdubinsky@nyls.edu	Estate of John P. O'Neill, Sr., et al v. Kingdom of Saudi Arabia, et al.
NOLAN LAW GROUP 20 North Clark Street, 30th Floor Chicago, IL 60602 Tel: (312) 630-4000 Fax: (312) 630-4011 Floyd Wisner, Esquire faw@nolan-law.com Paula Jett, Assistant plj@nolan-law.com	Salvo, et al. v. Al Qaeda Islamic Army, et al.
OLIVER & SELLITTO, ESQS. 205 Bond Street Asbury Park, NJ 07712 Tel: (732) 988-1500 Fax: (732) 775-7404 Anthony M. Sellitto, Jr., Esquire asellitto.911suit@aslaw.com	Burnett, et al. v. Al Baraka Investment and Development Corp., et al.

PROF. ROGER ALFORD Pepperdine University School of Law 24255 Pacific Coast Hwy Malibu, CA 90263 Tel: (310) 506 7626 Fax: (310) 506 4063 Professor Roger Alford	Estate of John P. O'Neill, Sr., et al v. Kingdom of Saudi Arabia, et al.
roger.alford@pepperdine.edu PRYOR CASHMAN SHERMAN & FLYNN LLP 410 Park Avenue, 10th Floor New York, New York 10022 Tel: (212) 421-4100 Fax: (212) 326-0806 Vincent F. Pitta, Esquire vpitta@pryorcashman.com	Burnett, et al. v. Al Baraka Investment and Development Corp., et al.
RAMEY & HAILEY 3815 River Crossing Parkway, Suite 340 Indianapolis, IN 46240 Tel: (317) 848-3249 Fax: (317) 848-3259 Richard D. Hailey, Esquire rhailey@sprynet.com	Burnett, et al. v. Al Baraka Investment and Development Corp., et al. Havlish, et al. v. Bin Laden, et al.
RILEY DeBROTA LLP 3815 River Crossing Parkway, Suite 340 Indianapolis, IN 46240 Tel: (317) 848-7939 Fax: (317) 848-7831 Amy Ficklin DeBrota, Esquire William Riley, Esquire saudisuit@rileydebrota.com	Burnett, et al. v. Al Baraka Investment and Development Corp., et al. Havlish, et al. v. Bin Laden, et al.
RUBENSTEIN & RYNECKI 16 Court Street, Suite 1717 Brooklyn, NY 11241 Tel: (718) 522-1020 Fax: (718) 522-3804 Sanford A. Rubenstein, Esquire Rubrynlaw@aol.com	Burnett, et al. v. Al Baraka Investment and Development Corp., et al.

Burnett, et al. v. Al Baraka Investment and Development Corp., et al.
Estate of John P. O'Neill, Sr., et al v. Kingdom of Saudi Arabia, et al.
Estate of John P. O'Neill, Sr., et al v. Kingdom of Saudi Arabia, et al.

SPEISER, KRAUSE, NOLAN & GRANITO 140 East 45 th Street, 34 th Floor New York, NY 10017 Tel: (212) 661-0011 Fax: (212) 953-6483 Frank H. Granito, III, Esquire f3g@ny.speiserkrause.com Kenneth P. Nolan, Esquire kpn@ny.speiserkrause.com Jeanne M. O'Grady, Esquire jog@ny.speiserkrause.com John F. Schutty, Esquire jfs@ny.speiserkrause.com SULLIVAN, PAPAIN, BLOCK, McGRATH & CANNAVO, P.C.	Burnett, et al. v. Al Baraka Investment and Development Corp., et al.
120 Broadway Avenue, 18 th Floor New York, NY 10271	Development Corp., et al.
Tel: (212) 732-9000 Fax: (212) 266-4141	
Michael N. Block, Esquire mblock@triallaw1.com	
Edward Marcowitz, Esquire emarcowitz@triallaw1.com	
Andrew Carboy, Esquire acarboy@triallaw1.com	
PROF. MICHAEL J. BAZYLER Whittier Law School 3333 Harbor Blvd. Costa Mesa, CA 92626 Tel: (310) 926-0149 Fax: (714) 444-1854	Estate of John P. O'Neill, Sr., et al v. Kingdom of Saudi Arabia, et al.
Michael J. Bazyler bazyler@aol.com	

WIGGINS, CHILDS, QUINN & PANTAZIS, PC 7 Dupont Circle, NW, Suite 200 Washington, DC 20036	Havlish, et al. v. Bin Laden, et al.
Dennis G. Pantazis, Esquire	
dgp@wcqp.com	
Timothy B. Fleming	
tfleming@wcqp.com	
Lori B. Kisch, Esquire	
lkisch@wcqp.com	
WINDER & HASLAM P.C.	Havlish, et al. v. Bin Laden, et al.
175 West 200 South, Suite 4000	
P.O. Box 2668	
Salt Lake City, UT 84111-2668	
Tel: (801) 322-2222	
Fax: (801) 322-2282	
Donald J. Winder, Esquire	
dwinder@winhas.com	

Defendants' Counsel (June 8, 2004)

03 MDL 1570 SERVICE LIST

In re: Terrorist Attack on September 11, 2001, 03 MD 1570 (Judge Richard Casey), U.S. District Court for the Southern District of New York

Defendants' Counsel

ARNOLD & PORTER LLP

555 Twelfth Street, NW Washington, DC 20004 Tel: (202) 942-5000 Fax: (202) 942-5999

Counsel for Saudi Economic & Development Company, International Development Foundation, and Sheikh Mohammed Salim bin Mahfouz

David Gersch, Esquire david_gersch@aporter.com

Jean E. Kalicki, Esquire jean_kalicki@aporter.com

Brian C. Wilson, Esquire brian_wilson@aporter.com

ARNOLD & PORTER LLP

399 Park Avenue

New York, NY 10022-4690

Tel: (212) 715-1000 Fax: (212) 715-1399

Counsel for Saudi Economic & Development Company, International Development Foundation, and Sheikh Mohammed Salim bin Mahfouz

Craig Stewart, Esquire craig stewart@aporter.com

BAKER BOTTS LLP

The Warner

1299 Pennsylvania Avenue, N.W. Washington, DC 20004-2400

Tel: (202) 639-7700 Fax: (202) 639-7890

Counsel for HRH Prince Sultan Bin Abdulaziz Al-Saud and HRH Prince Salman Bin Abdulaziz Al-Saud

Casey Cooper, Esquire William H. Jeffress, Jr., Esquire Jamie Kilberg, Esquire Sara Kropf, Esquire

MDL1570@bakerbotts.com

BECKER, HADEED, KELLOGG & BERRY

5501 Backlick Road, Suite 220

Springfield, VA 22151 Tel: (703) 333-3224 Fax: (703) 256-5431

Counsel for Success Foundation, Inc.; Muslim World League Offices-NY; Muslim World League-VA; and Mohamed S. Omeish

Michael Hadeed, Jr., Esquire mhadeed@beckerhadeed.com

BERNABEI & KATZ, PLLC

1773 T Street, N.W.

Washington, DC 20009-7139

Tel: (202) 745-1942 Fax: (202) 745-2627

Counsel for Dr. Abdullah M. Al-Turki; Dr. Abdullah Naseef; Dr. Abdullah Al-Obaid; Dr. Abdul Rahman Al Swailem; Sheik Saleh Al-Hussayen; Sheik Shahir Batterjee; Mushayt for Trading Company; Mohammed Ali Sayed Mushayt; Sheik Hamad Al-Husaini; Saudi Arabian Red Crescent Society; Sheik Salman Al-Oadah; Sheik Safer Al-Hawali; Al Haramain Islamic Foundation, Inc.; Soliman H.S. Al-Buthi; Soliman J. Khuderia; Talal M. Badkook; Dr. Adnan Basha; and Perouz Seda Ghaty

Lynne A. Bernabei, Esquire LBernabei@aol.com

Alan R. Kabat, Esquire Kabat@bernabeiandkatz.com

BONNER, KIERNAN, TREBACH AND CROCIATA

1250 Eye Street, N.W. Washington, DC 20005 Tel: (202) 712-7000 Fax: (202) 712-7100

Counsel for Khalid Bin Mahfouz

Michael Nussbaum, Esquire mnussbaum@bktc.net

BRYAN CAVE LLP

1290 Avenue of the Americas New York, NY 10104-3300

Tel: (212) 541-2000 Fax: (2120 541-4630

Counsel for Prince Naif bin Abdulaziz Al-Saud

Michael G. Biggers, Esquire mgbiggers@bryancave.com

BRYAN CAVE, LLP

700 Thirteenth Street N.W. Washington, DC 20005-3960

Tel: (202) 508-6000 Fax: (202) 508-6200

Counsel for Prince Naif bin Abdulaziz Al-Saud

James M. Cole, Esquire jmcole@bryancave.com

James J. Murphy, Esquire jjmurphy@bryancave.com

BUSCH & NUBANI, P.C.

5029 Backlick Road, Suite A

Amandale, VA 22003 Tel: (703) 658-5151 Fax: (703) 658-9200

Counsel for Al Haramain Islamic Foundation, Aquel Al-Aquel, Saleh O. Badahdah, Adballah bin Adbul Aziz Almosleh, Abdullah M. Al-Mahdi, Adel A.J. Batterjee, Jamal Ahmad Mostafa Khalifa, Islamic Assembly of North America; and Sulaiman Al-Ali

Ashraf W. Nubani, Esquire anubani@rbanlaw.com

CHADBOURNE & PARKE LLP

30 Rockefeller Plaza New York, NY 10112 Tel: (212) 408-5581 Fax: (646) 710-5581

Counsel for Yousef Jameel

Kenneth A. Caruso, Esquire Marvin R. Lange, Esquire Jeffrey I. Wasserman, Esquire

+MDL1570@chadbourne.com

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

101 Park Avenue New York, NY 10178 Tel: (212) 696-6000 Fax: (212) 697-1559

Counsel for HRH Prince Abdullah Al Faisal Bin Abdulaziz Al Saud, Alfaisaliah Group, Faisal Group Holding Co., and Mohammed Bin Abdulrahman Al Ariefy

T. Barry Kingham, Esquire bkingham@cm-p.com

Daria M. Ciaputa, Esquire dciaputa@cm-p.com

Jesse Clarke, Esquire jclarke@cm-p.com

FULBRIGHT & JAWORSKI, LLP

801 Pennsylvania Avenue, N.W.

Washington, DC 20004 Tel: (202) 662-4659 Fax: (202) 662-4643

Counsel for Nimir Petroleum, LLC

Matthew H. Kirtland, Esquire mkirtland@fulbright.com

GIBSON, DUNN & CRUTCHER LLP

1050 Connecticut Avenue, N.W.

Washington, DC 20036 Tel: (202) 955-8213 Fax: (202) 530-9566

Counsel for Salamiddin Abduljawad

John C. Millian, Esquire jmillian@gibsondunn.com

GILLEN PARKER & WITHERS LLC

One Securities Centre, Suite 1050 3490 Piedmont Road, NE Atlanta, GA 30305-1743

Tel: (404) 842-9700 Fax: (404) 842-9750

Counsel for Mar-Jac Poultry, Inc.

Wilmer Parker, III, Esquire bparker@gcpwlaw.com

GORDON & SIMMONS, LLC

131 West Patrick Street

P.O. Box 430

Frederick, MD 21705-0430

Tel: (301) 662-9122 Fax: (301) 698-0392

Counsel for Zahir H. Kazmi

Roger C. Simmons, Esquire Victor E. Cretella, III, Esquire officemail@gordonsimmons.com

GRAY CARY WARE & FREIDENRICH LLP

1625 Massachusetts Avenue, N.W., Suite 300

Washington, DC 20036 Tel: (202) 238-7700 Fax: (202) 238-7701

Counsel for African Muslim Agency; Heritage Education Trust; International Institute of Islamic Thought; Mar-Jac Investments, Inc.; Reston Investments, Inc.; Safa Trust; York Foundation; Taha Al-Alwani; Muhammad Ashraf; M. Omar Ashraf; M. Yaqub Mirza; Iqbal Unus; Jamal Barzinji; Sterling Management Group; Sterling Charitable Gift Fund Inc.; Mena Corporation; Grove Corporate, Inc.; and Sana-Bell, Inc.

Nancy Luque, Esquire nluque@graycary.com

Donna Sheinbach, Esquire dsheinbach@graycary.com

HANANIA & KHADER

6066 Leesburg Pike, Suite 101 Falls Church, VA 22041

Tel: 703-778-2400 Fax: 703-778-2407

Counsel for Abdul Rahman Al-Almoudi; Tarik Hamdi; World Assembly of Muslim Youth; Mohammed Hussein Al Almoudi: and Taibah International Aid Association

Maher Hanania, Esquire Mhanania@hknlaw.com

Angela Hensley Ahensley@hknlaw.com

JONES DAY

51 Louisiana Avenue, N.W. Washington, DC 20001 Tel: (202) 879-3939 Fax: (202) 626-1700

Counsel for Saudi Binladin Group, Inc.; Bakr M. Bin Laden; Omar Bin Laden; Tarek M. Bin Laden; and Khalid Bin Mahfouz

Stephen J. Brogan, Esquire Timothy J. Finn, Esquire James E. Gauch, Esquire Michael P. Gurdak, Esquire Jonathan C. Rose, Esquire Michael Shumaker, Esquire Jennifer Shumaker, Esquire Melissa Stear, Esquire

JonesDayMDL1570@jonesday.com dmcCaffrey@jonesday.com

JONES DAY

222 East 41st Street

New York, NY 10017-6702

Tel: (212) 326-3939 Fax: (212) 755-7306

Counsel for Saudi Binladin Group, Inc.; Bakr M. Bin Laden; Omar Bin Laden; Tarek M. Bin Laden; and Khalid Bin Mahfouz

E. Michael Bradley, Esquire Geoffrey S. Stewart, Esquire

JonesDayMDL1570@jonesday.com dmcCaffrey@jonesday.com

JOSHUA L. DRATEL, P.C.

14 Wall Street, 28th Floor New York, NY 10005 Tel: (212) 732-0707 Fax: (212) 571-6341

Counsel for Sami Omar Al-Hussayen

Joshua L. Dratel, Esquire jdratel@joshuadratel.com

Marshall A. Mintz, Esquire mmintz@joshuadratel.com

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

1615 M Street, N.W., Suite 400

Sumner Square

Washington, DC 20036-3209

Tel: (202) 326-7900 Fax: (202) 326-7999

Counsel for Prince Turki Al-Faisal Bin Abdulaziz Al-Saud, Prince Bandar bin Sultan bin Abdulaziz, Princess Haifa Al Faisal, and The Kingdom of Saudi Arabia

David C. Frederick, Esquire Michael J. Guzman, Esquire Mark C. Hansen, Esquire Michael K. Kellogg, Esquire J.C. Rozendaal, Esquire

KelloggMDL1570@khhte.com

Mguzman@khhte.com

KING & SPALDING LLP

1185 Avenue of the Americas New York, NY 10036 Tel: (212) 556-2100

Fax: (212) 556-2222

Counsel for Arab Bank PLC

Richard T. Marooney, Esquire rmarooney@kslaw.com

Jeanette M. Viggiano, Esquire jviggiano@kslaw.com

LAW FIRM OF OMAR T. MOHAMMEDI

200 Madison Avenue, Suite 1901 New York, NY 10016-3903

Tel: 212-752-3846 Fax: 212-725-9160

Counsel for World Assembly of Muslim Youth; WAMY International

Omar T. Mohammedi, Esquire omohammedi@otmlaw.com

LAW FIRM OF OMAR T. MOHAMMEDI

2201 NE 52nd Street, Suite 205 Lighthouse Point, FL 33064

Tel: 954-428-7757

Counsel for World Assembly of Muslim Youth; WAMY International

Khurrum Wahid, Esquire Khurrum.Wahid@verizon.net

MARTIN F. McMAHON & ASSOCIATES

1150 Connecticut Avenue, N.W., Suite 900

Washington, DC 20036 Tel: (202) 862-4343 Fax: (202) 828-4130

Counsel for Saleh Abdullah Kamei; Al Baraka Investment & Development Corp.; International Islamic Relief Organization; Rabita Trust; Dallah Al Baraka Group, LLC; Makkah Mukarrahman Charity Trust; and Wael Jalaidan

Martin F. McMahon, Esquire Christopher Smith, Esquire Stephanie Wall Fell

lawmfm@aol.com

McDERMOTT WILL & EMERY LLP

600 13th Street, N.W.

Washington, DC 20005-3096

Tel: (202) 756-8000 Fax: (202) 756-8087

Counsel for Yassin Abdullah Al Kadi

Thomas P. Steindler, Esquire Stanton D. Anderson, Esquire

MDLNo1570Group@mwe.com

PATTON BOGGS LLP

2550 M Street, N.W. Washington, DC 20037 Tel: (202) 457-6000

Fax: (202) 457-6315

Counsel for National Commercial Bank

Ronald S. Liebman, Esquire rliebman@pattonboggs.com

Mitchell Berger, Esquire mberger@pattonboggs.com

ROBBINS, RUSSELL, ENGLERT, ORSECK & UNTEREINER LLP

1801 K Street, NW, Suite 411 Washington, DC 20006 Tel: (202) 775-4500

Fax: (202) 775-4510

Counsel for Saudi High Commission

Lawrence S. Robbins, Esquire lrobbins@robbinsrussell.com

Roy T. Englert, Jr., Esquire renglert@robbinsrussell.com

Max Huffman, Esquire

mhuffman@robbinsrussell.com

SHEARMAN & STERLING LLP

599 Lexington Avenue New York, NY 10022-6069

Tel: (212) 848-4000 Fax: (212) 848-7179

Counsel for Saudi American Bank

Brian H. Polovoy, Esquire Daniel M. Segal, Esquire Henry Weisburg, Esquire

MDL1570@shearman.com

HUSSEIN SHOUKRY LAW FIRM

Adham Commercial Center, 9th Floor

Medina Road PO Box 667

Jeddah 21421, Saudi Arabia

Counsel for HRH Prince Mohamed al Faisal al Saud

Kamal Hussein Shoukry

STEPTOE & JOHNSON L.L.P.

1330 Connecticut Avenue, N.W.

Washington, DC 20036 Tel: (202) 429-3000 Fax: (202) 429-3902

Counsel for Mohammad Bin Abdullah Aljomaih

Christopher T. Lutz, Esquire

clutz@steptoe.com

UNITED STATES ATTORNEY'S OFFICE

86 Chambers Street, Third Floor

New York, NY 10007 Tel: (212) 637-2709 Fax: (212) 637-2717

Sarah S. Normand Assistant U.S. Attorney sarah.normand@usdoj.gov

UNITED STATES DEPARTMENT OF JUSTICE

Civil Division, Federal Programs Branch

P.O. Box 883

Washington, DC 20044 Tel: (202) 514-3367 Fax: (202) 616-8470

Elizabeth J. Shapiro, Esquire Elizabeth.Shapiro@usdoj.gov

WHITE & CASE LLP

601 Thirteenth Street, N.W. Washington, DC 20005-3807

Tel: (202) 626-3600 Fax: (202) 639-9355

Counsel for Al Rajhi Banking & Investment Corporation

Christopher M. Curran, Esquire

Nicole E. Erb, Esquire

AlRajhiBankMDL1570@whitecase.com.

WHITE & CASE LLP

1155 Avenue of the Americas New York, NY 10036-2787

Tel: (212) 819-8200 Fax: (212) 354-8113

Counsel for DMI Administrative Services, S.A.

Tim McCarthy, Esquire tmccarthy@whitecase.com

James J. McGuire, Esquire jmcguire@whitecase.com

WILLIAMS & CONNOLLY LLP

725 12th Street, N.W. Washington, DC 20005 Tel: (202)434-5000 Fax: (202) 434-5245

Counsel for Abdul Rahman Bin Kahlid Bin Mafouz

Gerald A. Feffer, Esquire gfeffer@wc.com

Peter J. Kahn, Esquire pkahn@wc.com

Thomas C. Viles, Esquire tviles@wc.com

WILMER CUTLER PICKERING HALE AND DORR LLP

1600 Tysons Boulevard, 10th Floor

McLean, VA 22102 Tel: (703) 251-9700 Fax: (202) 663-6363

Counsel for HRH Prince Mohamed Al Faisal Al Saud

David P. Donovan, Esquire david.donovan@wilmerhale.com

WILMER CUTLER PICKERING HALE AND DORR LLP

2445 M Street, N.W. Washington, DC 20037 Tel: (202) 663-6000 Fax: (202) 663-6363

Counsel for HRH Prince Mohamed Al Faisal Al Saud

Louis R. Cohen, Esquire louis.cohen@wilmerhale.com

Shirley Woodward, Esquire shirley.woodward@wilmerhale.com

WILMER CUTLER PICKERING HALE AND DORR LLP

399 Park Avenue New York, NY 10022 Tel: (212) 230-8800 Fax: (202) 663-6363

Counsel for HRH Prince Mohamed Al Faisal Al Saud

Matthew Previn, Esquire matthew.previn@wilmerhale.com